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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-208965

DATE: October 4, 1982

MATTER OF: Fresh Flavor Meals, Inc.

DIGEST:

1. Protest contending awardee is foreign firm which submitted below-cost proposal, thereby threatening existence of small and disadvantaged domestic companies, is dismissed since there is no Federal law preventing foreign firms from competing on Government contracts. Moreover, in the absence of a nonresponsibility determination, the fact that a "buy-in" proposal has been submitted provides no basis to challenge the award.
2. Protest that agency informed all offerors of its cost estimate before due date for best and final offers is dismissed since there is no law or regulation prohibiting such action provided it is given to all offerors at approximately the same time.

Fresh Flavor Meals, Inc. protests the award of contracts to a competitor under three requests for proposals (Nos. DLA 13H-82-R-8984; DLA 13H-82-R-8985; and DLA 13H-82-R-8986) issued by the Defense Logistics Agency for packaged food items. The protester contends that 1) the awards were improper because the awardee is a non-U.S. company which submitted a below-cost price, so that the awards threaten the existence of small and disadvantaged domestic companies; 2) the Buy American Act appears not to have been followed; and 3) three days before best and final offers were due, the contracting officer provided each offeror with the Government's estimate of costs. The protester states that a large company in possession of this "critical information" is better able to reduce its costs than a small firm such as the protester. For the reasons given below, we dismiss the protest.

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In the absence of a finding of nonresponsibility by the contracting officer, a below-cost or "buy-in" proposal provides no basis to challenge an award. W.M. Grace, Inc., B-205537, February 1, 1982, 82-1 CPD 74. No evidence has been provided indicating such a finding was made in this case.

The protester does not explain how the Buy American Act, 41 U.S.C. § 10a-d (1976), was violated, although a reasonable reading of the protest is that the protester believes the Act prohibits awards to foreign firms. Neither that Act, however, nor any other Federal law prevents foreign firms from bidding on Government procurements. The Buy American Act merely seeks to equalize any competitive advantage which foreign firms may possess. Omega Machine Co., B-204471, December 3, 1981, 81-2 CPD 442. In the absence of any specific allegation concerning how the provisions of the Buy American Act may have been violated, we will not consider this aspect of the protest further.

Finally, we are aware of no statute or regulation which prohibits an agency from revealing its estimate of costs, provided the same information is given to all offerors at approximately the same time. In similar situations, we have approved solicitations for mess attendant and maintenance services which provide the Government's estimates as to the minimum man-hours required. See Tombs & Sons, Inc.; Dyneteria, Inc., B-181698; B-181706, February 6, 1975, 75-1 CPD 83; Planning Research Corporation, B-182962, July 15, 1975, 75-2 CPD 37.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel